THE EVOLUTION OF PROBLEM-SOLVING COURTS

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If it ain’t broke, don’t fixit!

• In 1980, there were 330,000 persons in U.S. prisons. By 1990, how many people were incarcerated in the U.S.?
  A. About 450,000
  B. About 600,000
  C. About 775,000

• It costs the State about $16,000 to $20,000 to incarcerate a prisoner for one year. The annual cost to treat a person with a drug addiction is about:
  A. $2,000
  B. $4,000
  C. $5,500
If it ain’t broke, don’t fixit!

• A person who serves prison time is less likely to return to prison than a person who is treated for drug addiction outside of prison.
  
  • True  False

What is Justice?

• Fairness
• Equity
• Proportionality
• Consistency

Aristotle defined “justice” as that which is lawful and fair. The purpose of justice is to correct what is wrong and unequal.

Theories of Justice

• Retributive justice traces it’s roots to the Code of Hammurabi. The Code provided that vengeance be taken against those who fail to comply with the Code.

• Retributive justice is based upon the axiom of lex talonis - an eye for an eye.

• Retributive Justice is focused on the offender.
Theories of Justice

- **Restorative justice** is based upon making the offender repair the damage caused to the victim and the community.
  - The offender repairs the damage and accepts responsibility.
  - Restorative justice is focused on the victim, the community and the offender.

- **Therapeutic jurisprudence** focuses on rehabilitating the offender.
  - Although confused with restorative justice, therapeutic jurisprudence is not really concerned with restoration of the victim and the community.
  - The offender is the focus of a therapeutic jurisprudence.

The Administration of Justice

- For purposes of this discussion, we will refer to two types of courts:
  - traditional courts, and
  - problem-solving courts.
How are most cases handled?

- Efficiently
- Quickly
- Plea bargains negotiated by prosecutors
- With little active judicial involvement

The dilemma of too many cases, too little time

- In most cases, the judge’s involvement may consist of a quick review of the plea bargain, a brief meeting with the defendant, and the acceptance of the defendant’s plea.
- Barring a motion to revoke probation, the judge will likely have no further involvement.
- The efficiency of the system has led some judges to refer to the administration of justice as “McJustice.”

What is the result?

- No “big picture” view of justice.
- Mistakes are not a learning experience, but are repeated over and over.
- No feedback to the court on what works and what does not work.
- More effective options are not considered.
What can be done?

• Re-examine the justice system.
• Recommend improvements.
• Study the effectiveness of those changes.

What was the result?

• Problem-Solving Courts

What are problem-solving courts?

• Problem-solving courts have the following elements:
  • direct interaction between defendants and the judge,
  • a problem-solving focus,
  • team approach to decision making,
  • integration of social services into the problem-solving process,
  • judicial supervision of the treatment process,
  • community outreach, and
  • a proactive role for the judge inside and outside the courtroom.
What are problem-solving courts?

- Problem-solving courts differ according to their function.
- The principles of problem-solving courts have been applied to:
  1. drug offenders,
  2. mentally ill offenders,
  3. domestic violence offenders,
  4. drunk driving offenders, and
  5. youthful offenders.

Drug Courts

- After the “war on drugs” began in the early 70’s, the number of drug offenses and incarcerations increased several fold.
- Soon prisons were at capacity.
- Very soon, judges came to realize that they were seeing many of the same defendants over and over again. Further, mandatory sentencing guidelines eliminated judicial discretion.
- In Miami, the judges and the prosecutors began to study the justice system and the revolving door.

Drug Courts

- The result of this study was the creation of the first drug court. This new drug court gradually became a problem-solving court.
- The resulting team oriented approach to justice resulted in reduced incarcerations and reduced rates of recidivism. The court learned to use intermediate sanctions before incarcerating an offender. Further, the offender was responsible for contributing to his/her own rehabilitation.
Mental Health Courts

• About the same time as the creation of the first drug court in Miami, the evolution of the mental health court in Los Angeles continued. Mentally ill offenders have come to represent a huge part of the inmate population.
• In the 1960’s and 70’s most state institutions for the mentally ill were closed. They were not replaced. As a result, the mentally ill often went to the streets.
• An estimated 40 to 50% of the homeless are mentally ill. About half of the homeless mentally ill suffer from a treatable mental illness.
• About 16% of the persons in prison are mentally ill.

Mental Health Courts

• The Mental Health Court differs from the drug court in many ways. Perhaps one of the most important ways is focus on expertise. The judge of problem-solving mental health court must have a more extensive knowledge of mental illness and treatment.
• Mental health courts can save money, but require cross-agency coordination.
• Mental health courts must take extra precautions to protect the rights of offenders.

Two-thirds of youth cases are filed in the Municipal Court or Justice Courts
Youth Courts

• In Texas, charges against youth from age 10 to 16 are filed in juvenile courts (if the offense is punishable by jail time if committed by an adult) and in justice courts and municipal courts (if the offense is punishable by fine only).

• More cases (not including traffic offenses) are filed in the justice/municipal courts than in juvenile courts.

• In 2005, the Texas legislature authorized cities and counties to collect a fee of up to $5 on each conviction in justice/municipal court to pay juvenile case managers.

Youth Courts

• How much money will this raise?
  • For the City of Austin, it will raise about $700,000 to $750,000 per year. For Travis County the fee will raise about $200,000 to $250,000 per year.

• Can this money be used for other court-related expenses?
  • Probably not.
  • As a result, other local money must be dedicated to a youth court if one is created.
Youth Courts

• Have any youth courts been created?
  • Thus far, it does not appear that any youth courts have been created. Juvenile dockets, teen courts, and juvenile municipal courts are preliminary measures.

How can more problem-solving courts be created?

• Education
• Research
• Dialogue between the judiciary, the bar and the community

Thank you for your attention!